

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

NILDA VERGARA, M.D.)

File No. 800-2015-013832

**Physician's and Surgeon's)
Certificate No. A 37908)**

Respondent)

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 1, 2017.

IT IS SO ORDERED August 4, 2017.

MEDICAL BOARD OF CALIFORNIA

**By: Michelle Anne Bholat M.D.
Michelle Anne Bholat, M.D., Chair
Panel B**

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5597
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 800-2015-013832

11 **NILDA VERGARA, M.D.**
12 **2039 Forest Avenue #205B**
13 **San Jose, CA 95128**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 **Physician's and Surgeon's Certificate No. A**
37908

15 Respondent.

16
17 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
20 of California (Board). She brought this action solely in her official capacity and is represented in
21 this matter by Xavier Becerra, Attorney General of the State of California, by Alice W. Wong,
22 Deputy Attorney General.

23 2. Respondent NILDA VERGARA, M.D. (Respondent) is represented in this
24 proceeding by attorney Thomas Still, whose address is: Thomas E. Still, Hinshaw, Marsh, Still &
25 Hinshaw, LLP, 12901 Saratoga Ave Saratoga, CA 95070.

26 3. On or about January 4, 1982, the Board issued Physician's and Surgeon's Certificate
27 No. A 37908 to NILDA VERGARA, M.D. (Respondent). The Physician's and Surgeon's
28

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 800-2015-013832, and will expire on January 31, 2018, unless renewed.

3 **JURISDICTION**

4 4. On January 20, 2017, Complainant Kimberly Kirchmeyer, in her official capacity as
5 the Executive Director of the Board, filed Accusation No. 800-2015-013832 (Accusation) against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent and she timely filed her Notice of Defense.

8 5. A copy of Accusation No. 800-2015-013832 is attached as exhibit A and incorporated
9 herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 800-2015-013832. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
17 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
18 to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws, having
21 been fully advised of same by her attorney of record.

22 8. Respondent, having the benefit of counsel hereby voluntarily, knowingly, freely and
23 intelligently waives and gives up each and every right set forth above.

24 **CULPABILITY**

25 9. Respondent agrees that, at an administrative hearing, Complainant could establish a
26 *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-
27 2015-013832 and that she has thereby subjected her Physician's and Surgeon's Certificate to
28

1 disciplinary action. Respondent further agrees to be bound by the Board's imposition of
2 discipline as set forth in the Disciplinary Order below.

3 **CONTINGENCY**

4 10. This stipulation shall be subject to approval by the Medical Board of California.
5 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
6 Board of California may communicate directly with the Board regarding this stipulation and
7 settlement, without notice to or participation by Respondent or her counsel. By signing the
8 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
9 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
10 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
11 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
12 action between the parties, and the Board shall not be disqualified from further action by having
13 considered this matter.

14 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
15 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
16 signatures thereto, shall have the same force and effect as the originals.

17 12. In consideration of the foregoing admissions and stipulations, the parties agree that
18 the Board may, without further notice or formal proceeding, issue and enter the following
19 Disciplinary Order:

20 **DISCIPLINARY ORDER**

21
22 **A. PUBLIC REPRIMAND**

23 **IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A 37908
24 issued to Respondent NILDA VERGARA, M.D. is hereby publicly reprimanded pursuant to
25 California Business and Professions Code Code § 2227(a)(4). This Public Reprimand, which is
26 issued in connection with Respondent's actions as set forth in Accusation No. 800-2015-013832,
27 is as follows:
28

1 On or about January 14 and 15, 2015, you prescribed a compounded cough medicine to a
2 minor patient, containing corticosteroid in an amount which over time, could potentially
3 pose health risks to the minor patient. You also failed to properly document the
4 prescription of the compounded cough medication and instructions concerning the use of or
weaning from the compounded cough medication.

5 **B. MEDICAL RECORDS KEEPING COURSE**

6 Within 60 calendar days of the effective date of this Decision, Respondent shall enroll
7 in a course in medical record keeping approved in advance by the Board or its designee.
8 Respondent shall provide the approved course provider with any information and documents
9 that the approved course provider may deem pertinent. Respondent shall participate in and
10 successfully complete the classroom component of the course not later than six (6) months
11 after Respondent's initial enrollment. Respondent shall successfully complete any other
12 component of the course within one (1) year of enrollment. The medical record keeping
13 course shall be at Respondent's expense and shall be in addition to the Continuing Medical
14 Education (CME) requirements for renewal of licensure.
15

16 A medical record keeping course taken after the acts that gave rise to the charges in the
17 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
18 or its designee, be accepted towards the fulfillment of this condition if the course would have
19 been approved by the Board or its designee had the course been taken after the effective date of
20 this Decision.
21

22 Respondent shall submit a certification of successful completion to the Board or its
23 designee not later than 15 calendar days after successfully completing the course, or not later than
24 15 calendar days after the effective date of the Decision, whichever is later.
25

26 Failure to participate in and complete successfully all phases of the clinical training
27 program outlined above shall constitute unprofessional conduct and grounds for further
28 disciplinary action. If Respondent fails to successfully complete the clinical training program, or

1 fails to complete it within the designated time period, Respondent shall cease the practice of
2 medicine within 72 hours after being notified by the Board or its designee that Respondent failed
3 to complete the clinical training program.

4 ACCEPTANCE

5 I, NILDA VERGARA, M.D., have carefully read this Stipulated Settlement and
6 Disciplinary Order and, having the benefit of counsel, enter into it freely, voluntarily, intelligently
7 and with full knowledge of its force and effect on my Physician's and Surgeon's Certificate No.
8 A 37908. I fully understand that, after signing this stipulation, I may not withdraw from it, that it
9 shall be submitted to the Medical Board of California for its consideration, and that the Board
10 shall have a reasonable period of time to consider and act on this stipulation after receiving it. By
11 entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall
12 be publically reprimanded by the Board and shall be required to comply with the terms and
13 conditions of the Disciplinary Order set forth above. I, also, fully understand that any failure to
14 comply with the terms and conditions of the Disciplinary Order set forth above shall constitute
15 unprofessional conduct and that my Physician's and Surgeon's Certificate No. A 37908 will be
16 subject to further disciplinary action.

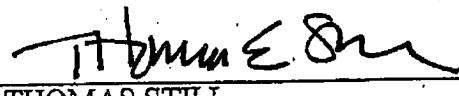
17
18 DATED: May 15, 2017



NILDA VERGARA, M.D.
Respondent

20 I have read and fully discussed with Respondent NILDA VERGARA, M.D. the terms and
21 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
22 I approve its form and content.

23 DATED: MAY 15, 2017



THOMAS STILL
Attorney for Respondent

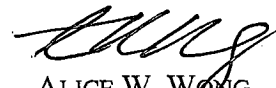
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 5/17/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General


ALICE W. WONG
Deputy Attorney General
Attorneys for Complainant

SF2016503840

Exhibit A

Accusation No. 800-2015-013832

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 20, 2017
BY Robyn Fitzwater ANALYST

KATHLEEN A. KENEALY
Acting Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
ALICE W. WONG
Deputy Attorney General
State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5597
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-013832

Nilda Vergara, M.D.
2039 Forest Avenue #205B
San Jose, CA 95128

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. A 37908,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about January 4, 1982, the Medical Board issued Physician's and Surgeon's Certificate Number A 37908 to Nilda Vergara, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2004 of the Code provides, in pertinent part, that the Medical Board shall
2 have responsibility for:

3 “(a) The enforcement of the disciplinary and criminal provisions of the Medical
4 Practice Act.

5 “(b) The administration and hearing of disciplinary actions.

6 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or
7 an administrative law judge.

8 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion
9 of disciplinary actions.

10 “(e) Reviewing the quality of medical practice carried out by physician and
11 surgeon certificate holders under the jurisdiction of the board.

12 “....”

13 5. Section 2227 of the Code provides that a licensee who is found guilty under the
14 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
15 one year, placed on probation and required to pay the costs of probation monitoring, be publicly
16 reprimanded, or such other action taken in relation to discipline as the Board deems proper.

17 6. Section 2234 of the Code, states, in pertinent part:

18 “The board shall take action against any licensee who is charged with unprofessional
19 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
20 limited to, the following:

21 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
22 violation of, or conspiring to violate any provision of this chapter.

23 “....”

24 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
25 omissions. An initial negligent act or omission followed by a separate and distinct departure from
26 the applicable standard of care shall constitute repeated negligent acts.

27 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
28 for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“ . . . ”

7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

FACTS

8. At all times relevant to this matter, Respondent was licensed and practicing medicine in San Jose, California.

9. Respondent saw Patient P-1,¹ a child just short of her second birthday, on three occasions, January 13, 2015, January 20, 2015, and February 20, 2015. P-1 had been seen before this and has been seen since at the Santa Clara Valley Medical Center clinics for primary pediatric care and by a pulmonologist for persistent asthma.

10. When P-1 first saw Respondent, she noted that P-1 had been diagnosed with asthma and was maintained on corticosteroid and albuterol inhalers. P-1 presented with fever, coughing, and loss of appetite. Although she had taken an antibiotic prior to this visit, it is not noted in Respondent's chart notes. Respondent diagnosed pneumonia, laryngotracheobronchitis (croup), and asthma, treated P-1 in the office, and prescribed a different antibiotic for her.

11. Respondent states that she followed up with P-1 by telephone on January 14 and 15, 2015 and, based on the follow up, prescribed compounded cough syrup at a daily dose containing 0.55 mg dexamethasone, a corticosteroid. She prescribed a sufficient amount of the medication to last a month and, when P-1's mother said that she was afraid that P-1 would begin to cough again

¹ The patient is designated in this document as Patient P-1 to protect her privacy. Respondent knows the name of the patient and can confirm her identity through discovery.

1 because her entire family had colds, Respondent called in a partial refill for the medication. None
2 of this information is included in Respondent's chart notes for P-1.

3 12. Respondent's chart notes for P-1's follow up visits on January 20 and February 20,
4 2015 do not make reference to the compounded cough medication, instructions on how to take the
5 medication, or to the advice she states she gave P-1's mother concerning weaning P-1 off the
6 medication.

7 13. Although Respondent states that she was concerned about P-1's reduced "immunity"
8 and recommended an over the counter immune pediatric supplement for P-1 on February 20,
9 2015, it is not documented in P-1's chart notes.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Repeated Negligent Acts)**

12 14. Respondent is guilty of unprofessional conduct and subject to disciplinary action
13 under section 2234, subdivisions (a) (violating the Medical Practice Act) and (c) (repeated
14 negligent acts), of the Code in that Respondent engaged in the conduct described above including;
15 but not limited to, the following:

16 A. Respondent prescribed an oral corticosteroid containing medication to manage P-1's
17 asthma.

18 B. The systemic corticosteroid prescribed by Respondent could, over time, potentially
19 cause significant and serious hypothalamic-pituitary-adrenal axis suppression.

20 C. At the same time that Respondent was managing P-1's asthma with a corticosteroid
21 containing medication which can cause immune suppression, she expressed concern about P-1's
22 reduced "immunity" and recommended an over the counter pediatric immunity supplement.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Inadequate Recordkeeping)**

25 15. Respondent is guilty of unprofessional conduct and subject to disciplinary action
26 under section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct
27 described above including, but not limited to, the following:
28

1 A. Respondent failed to document that there were follow up telephone visits in P-1's
2 chart notes and failed to document any information obtained during those telephone visits.

3 B. Respondent failed to document that she had prescribed the compounded cough
4 medication for P-1 or to mention it in any way in any of her chart notes.

5 C. Respondent failed to document any instructions concerning the use of or weaning
6 from the compounded cough medication.

7 D. Respondent did not document that P-1 had been treated with an antibiotic prior to
8 Respondent seeing her on January 13, 2015.

9 E. Respondent did not document her concerns about P-1's reduced "immunity" or her
10 recommendation for an over the counter pediatric immunity supplement.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

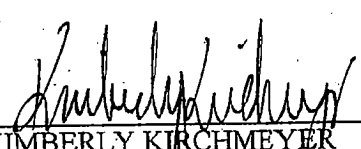
14 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 37908,
15 issued to Nilda Vergara, M.D.;

16 2. Revoking, suspending or denying approval of Nilda Vergara, M.D.'s authority to
17 supervise physician assistants, pursuant to section 3527 of the Code;

18 3. Ordering Nilda Vergara, M.D., if placed on probation, to pay the Board the costs of
19 probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.

21
22 DATED: January 20, 2017


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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